IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WA.No. 622 of 2003

AGAINST THE JUDGEMENT/ORDER IN OP.574/1995 Dated 06/02/2003

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APPELLANT: PETITIONERS 1 & 3 TO 6 IN THE O.P:

1. R.AUSTIN,
   DY.DISTRICT EDUCATION AND MEDIA OFFICER,
   D.M.O'S OFFICE, THIRUVANANTHAPURAM, NOW PRODUCTION AND DISTRIBUTION ASSISTANT, DIRECTORATE OF HEALTH SERVICES, THIRUVANANTHAPURAM.

2. E.AYYAPPAN,
   DY. DISTRICT EDUCATION AND MEDIA OFFICER,
   D.M.O'S OFFICE, THIRUVANANTHAPURAM, NOW DISTRICT EDUCATION MEDIA OFFICER, D.M.O'S OFFICE,PALAKKAD.

3. K.P.SURESH KUMAR,
   DY. DIST. EDUCATION AND MEDIA OFFICER,
   D.M.O'S OFFICE, KOZHIKODE, NOW DISTRICT EDUCATION MEDIA OFFICER, D.M.O'S OFFICE, KANNUR.

4. S.PUSHPA RAJAN,
   DY. DIST. EDUCATION AND MEDIA OFFICER,
   D.M.O'S OFFICE, KOZHIKODE, NOW DISTRICT EDUCATION MEDIA OFFICER, D.M.O'S OFFICE, MALAPPURAM.

5. P.S.VIJAYALAKSHMI,
   DY. DISTRICT EDUCATION AND MEDIA OFFICER,
   D.M.O'S OFFICE, PATHANAMTHITTA, NOW DEPUTY DIST. EDUCATION & MEDIA OFFICER, D.M.O'S OFFICE,KOLLAM.

BY ADV. SMT.V.P.SEEMANDINI
SRI.C.P.SUDHAKARAPRASAD
SMT.S.KARTHIKA
SRI.M.R.ANISON
SMT.T.B.REMANI

RESPONDENTS: RESPONDENTS IN O.P:

1. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY,
   SECRETARIATE, THIRUVANANTHAPURAM.

2. DIRECTOR OF HEALTH SERVICES, THIRUVANANTHAPURAM.

3. K.SUNIL KUMAR,
DISTRICT EDUCATION MEDIA OFFICER, D.M.O'S OFFICE,
KOZHIKODE, NOW DISTRICT EDUCATION MEDIA OFFICER,
D.M.O'S OFFICE, ERNAKULAM.

4. P.C.THANKAPPAN,
HEALTH EDUCATION EXTENSION OFFICER, KOZHIKODE,
NOW DISTRICT EDUCATION MEDIA OFFICER,
D.M.O'S OFFICE, KOTTAYAM.

5. G.SREEKALA,
DIST. EDUCATION MEDIA OFFICER, D.M.O'S OFFICE, ALAPPUZHA.

6. SANDHYA M.S.
DIST. HEALTH EDUCATION OFFICER, D.M.O'S OFFICE,
ERNAKULAM, NOW SENIOR BIOLOGIST, N.F.C.P. UNIT,
ERNAKULAM.

7. T.K.HARIDAS,
DIST. HEALTH EDUCATION OFFICER, D.M.O'S OFFICE,
THRISSUR, NOW SENIOR BIOLOGIST, N.F.C.P. UNIT,
TALUK HEADQUARTERS HOSPITAL, KASARAGOD.

8. K.N.CHANDRAN,
DIST. HEALTH EDUCATION OFFICER, D.M.O'S OFFICE,
MANANTHAVADI, WAYANAD.

9. S.PAVITHRAN,
DIST. HEALTH EDUCATION OFFICER, D.M.O'S OFFICE,
KOLLAM, NOW BIOLOGIST, N.F.C.P. UNIT, THIRUVANANTHAPURAM.

10. M.RAMACHANDRAN,
DIST. HEALTH EDUCATION OFFICER, D.M.O'S OFFICE,
KANHANGAD, KASARAGOD DIST.

11. HARIKUMAR,
DIST. HEALTH EDUCATION OFFICER, D.M.O'S OFFICE, PALAKKAD.

12. CHANDRALATHA,
DIST. HEALTH EDUCATION OFFICER, D.M.O'S OFFICE, KOZHIKODE.

BY GOVERNMENT PLEADER SRI.BENNY GEVACIS
SRI.M.V.BOSE
SRI.K.GOPALAKRISHNA KURUP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007, ALONG WITH WA NO. 521 OF 2003, WA NO. 1113 OF 2006 & OP NO. 9179 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & A.K.BASHEER, JJ.

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W.A.Nos.622/03,521/03, 1113/06 & O.P.No.9179/03

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Dated this the 11th day of September, 2007

JUDGMENT

Radhakrishnan, J

Writ appeal 622/03 arise out of judgment in O.P.574/95 which was filed seeking a writ of certiorari to quash Exts.P10 and P11 orders and also for a writ of mandamus directing respondents 1 and 2 not to grant seniority to the respondents 3 to 12 over the petitioners in the cadre of District Education and Media Officer. Learned Single Judge disposed of the matter holding that as far as the post of District Education and Media Officer held by the petitioners in O.P.18128/94 and O.P.574/97 are concerned, they will be entitled to retain the seniority based on the date in which they were promoted to that post and there cannot be any dispute on re-designation of the petitioner in O.P.22682/97 and similarly situated special recruits in 1990 as District Education and Media Officers. With regard to seniority, the contention is that as on the date

of advice of the special recruits, they were drawing a lesser pay than the District Education and media Officer. Making these observations, Learned Single Judge left open the question of seniority and held that that will be decided with notice to all the parties by the appropriate authority.

2. Learned senior counsel appearing for the appellant laid specific reference to paragraph 13 of the counter filed by the first respondent wherein it is stated that rules for fixing the interse seniority has not been issued in G.O.(MS) 407/94/H&FWD dated 28.11.1994. The 2nd respondent is the appointing authority of the post of District Education Media Office, but rules for fixing seniority has not been issued so far.

3. We are of the view that the question of seniority has to be determined by the department in accordance with law. In such circumstances, Ext.P10 order is sustained and we leave the matter to the Government/first respondent to determine the seniority in accordance with law, after giving

opportunity of hearing to the concerned parties, untrammeled by the observations contained in the judgment of the learned Single Judge.

Writ appeals and Original petition are disposed of as above.

K.S.RADHAKRISHNAN, JUDGE

A.K.BASHEER, JUDGE

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